

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

**FILE NUNC PRO TUNC 6/11/07**

vs.

Case No. 3:06cr154

THOMAS L. McCUALEY, SR.,

JUDGE WALTER HERBERT RICE

Defendant.

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ENTRY CONTINUING SENTENCING AT DEFENDANT'S REQUEST TO  
ALLOW FILING OF MEMORANDUM AND TO INVESTIGATE THE  
POSSIBILITY OF RETAINING NEW COUNSEL; DECISION AND ENTRY  
RULING ON CERTAIN PENDING MOTIONS

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Sentencing in the captioned cause, heretofore set for June 11, 2007, is reset to 4 p.m. on Monday, June 25, 2007, at Defendant's request, in order to allow his counsel to brief the applicability of certain proposed amendments to the Sentencing Guidelines, effective November 1, 2007 (if not otherwise disapproved), relating to the definition of related cases. The Court has rendered the preliminary opinion that said Amended Guidelines, even if applicable and approved, will not effect the criminal history of four, even though it might affect the computation of the criminal history points, given that someone who qualifies as an Armed Career Criminal is, by Guidelines section 4b1.4(c) entitled to a criminal history of four, regardless of the number of criminal history points, should the Defendant, with all

applicable points counted, be less than a criminal history of four. The Government is to respond to the Defendant's memorandum, which is to be filed by the close of business on Friday, June 15, 2007, not later than the close of business on Friday, June 22, 2007. Additionally, the Defendant sought the continuance in order to have further discussions with an attorney he wishes to retain, one fnu Phillips of Cincinnati.

The Defendant's *pro se* Motion to Dismiss an Indictment, on the grounds of violation of the Speedy Trail statute (Doc. #41), is overruled, given that this Court is satisfied that any and all continuances had in the captioned matter were occasioned either by matters long-since held to be such as to provide excludable time and, in addition, due to the Defendant's own motions and/or oral requests. Additionally, this Court has fully answered the questions raised by the Defendant's *pro se* motion, regarding Docs. #14, #23, #26, #27, #40 and #41. The Defendant's *pro se* motion seeking a downward departure (Doc. #54) is overruled, given that the sentence to be imposed in this case is a mandatory minimum of 15 years, a sentence which has been promised to the Defendant. This ruling is without prejudice, should the Court conclude that the prospective amendments to the Sentencing Guidelines have some applicability to the Defendant.

/s/ Walter Herbert Rice

July 6, 2007

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WALTER HERBERT RICE  
UNITED STATES DISTRICT JUDGE

Copies to:

Sheila Lafferty, Esq.  
Cheryll Bennett, Esq.  
United States Marshal  
United States Pretrial Services  
United States Probation Department